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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. ELVIS GONSALES, Defendant and Appellant.	H044367 (Santa Clara County Super. Ct. No. C1519827)

A jury found defendant Elvis Gonsales guilty of first degree burglary and resisting arrest. The jury found true the allegation that a person was present at the victim's residence during the burglary. The trial court granted a five-year term of probation with one year in county jail.

Gonsales was accused of entering an attached garage together with two or three other men. The garage was on the ground floor of a townhouse with the living area on the second floor above the garage. The garage was connected to the living area through an exterior door and a stairway outside the building; there was no interior doorway connecting the garage to the living area. Gonsales contends the evidence was insufficient to support his conviction for first degree burglary because the garage was not part of an inhabited dwelling under Penal Code section 460. We conclude this claim is without merit.

Second, Gonsales contends the trial court erred by excluding statements he made in direct testimony about his interactions with one of the other burglars when the police

apprehended them. We conclude this claim is also without merit. We will affirm the judgment.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. Procedural Background

The prosecution charged Gonsales with two counts: Count 1—first degree burglary (Pen. Code, §§ 459, 460, subd. (a))[1]; and count 2—resisting, delaying, or obstructing an officer (§ 148, subd. (a)(1)). As to count 1, the information further alleged a person was present at the residence during the burglary. (§ 667.5, subd. (c).) A jury found Gonsales guilty on both counts and found the allegation true. The trial court sentenced him to a four-year term, but the court suspended execution of the sentence and granted a five-year term of probation with one year in county jail.

B. Facts of the Offense

The victim, Juan Soto, lived with his wife and daughter in a townhouse located in a large apartment complex. Soto's townhouse had an upstairs living area with a garage on the ground floor below the living area. The garage had two larger doors on the front for cars to enter and exit, and a separate door on the side for people. A flight of stairs on the exterior side of the townhouse connected the side door to the upstairs living area. Soto had installed an alarm on the side door that would activate when the door was opened, making a sound in the upstairs living area.

Around 2:00 to 2:30 a.m. on September 11, 2015, Soto was upstairs in bed when he heard the alarm go off. Soto got up, turned off the alarm, and heard noises that sounded like people moving things around in the garage below. Soto's wife told him not to go outside, so he called the police instead. Soto testified, "I was gonna go outside, but my wife told me don't go out, to call the police, and that's what I did."

[1] Subsequent undesignated statutory references are to the Penal Code.

Nicolas Tomas lived in a neighboring townhouse about 20 feet across from Soto's townhouse. Around 2:00 a.m. that night, he heard "strong language" from voices outside his window, and his dog began growling. He looked out his window and saw that the front left door of Soto's garage was open. There were three strange men around one of the cars in the garage, standing under the open garage door. At some point, a fourth person arrived. At least two of the persons went into the garage. Tomas could see the men's faces well enough to know they did not live at Soto's residence. Tomas called 911, gave the dispatcher physical descriptions of the men, and described their movement around the garage and parking lot. Tomas described the men as Mexican or African-American males in their mid-20s. One wore a red shirt and a gray beanie, another wore a white T-shirt and jeans, and the third wore a gray shirt with black shorts.

San Jose Police Officer Joshua Schwitters arrived at the location around 2:29 a.m. When he drove into the apartment complex, Officer Schwitters saw three pedestrians matching the descriptions Tomas had provided. When Officer Schwitters spotted the men, they ran away, whereupon he pursued two of them on foot throughout the apartment complex. The two men ran down a pedestrian foot path and turned a corner, at which point Officer Schwitters lost sight of them for a few seconds. He stopped and listened for the two men, whereupon he heard a "thud." He then saw the man in the white shirt—later identified as Komal Kharoud—"pop his head up from behind a second floor balcony" and duck back down. Officer Schwitters drew his firearm and ordered the man to stand up. The man eventually stood back up and complied with the officer's orders. About ten seconds later, Gonsales also stood up. Officer Schwitters recognized him as one of the men he had encountered upon arriving at the apartment complex. The police then took the two men into custody. In court, Officer Schwitters identified Gonsales as the man who had been wearing the red shirt.

After taking Gonsales and the other man into custody, the police brought Tomas to an illuminated area of the apartment complex, whereupon he identified Gonsales as the

burglar in the red shirt and the other man as the burglar in the white shirt. Tomas also identified Gonsales in court as the burglar who had been wearing the red shirt.

Gonsales testified in his defense as follows. On the night of the burglary, he had been at a friend's house celebrating a birthday earlier in the evening. Around 1:40 a.m., his girlfriend picked him up and took him to get some fast food. About 15 or 20 minutes later, she dropped him off at the apartment complex, and he started walking alone towards Komal Kharoud's condominium. Gonsales was friends with Kharoud and Kharoud's brother.

Gonsales was walking through the complex when he saw a fast-moving police car come to a stop behind him. He then started "kind of speed walking" towards Kharoud's condominium. Gonsales testified that he was afraid of police officers based on his personal experience and interactions with the police. He quickly walked away from the police because he was afraid the police were going to stop him for no reason. He went up the staircase to Kharoud's condominium, jumped onto the balcony, and crouched down. He then heard shouting and footsteps coming up the stairway. He then saw Kharoud hop over the wall onto the balcony, and he realized Kharoud was running from the police.

Gonsales saw a flashlight beam and heard the police giving commands. Kharoud put his head up and ducked back down again. Kharoud then jumped over the balcony and went inside the condo, whereupon Gonsales stood up and surrendered to the police.

II. DISCUSSION

A. Sufficiency of the Evidence for First Degree Burglary

Gonsales contends the evidence was insufficient to sustain a conviction for first degree burglary of an inhabited dwelling. He argues that because the evidence shows he entered an attached garage, and not the living area of the townhouse, the offense could not constitute burglary of an inhabited dwelling. He points to the absence of any door connecting the garage to the living area, and he argues the garage had a separate exterior entrance for pedestrians that was accessible only from a public street. The Attorney

General contends that the definition of an inhabited dwelling for the purposes of first degree burglary includes an attached garage below an apartment.

1. Legal Principles

"In reviewing the sufficiency of evidence under the due process clause of the Fourteenth Amendment to the United States Constitution, the question . . . is 'whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' " (*People v. Rowland* (1992) 4 Cal.4th 238, 269, quoting *Jackson v. Virginia* (1979) 443 U.S. 307, 319.) The California Constitution requires the same standard. (*Ibid.*) "[W]e review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence—evidence that is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citations.] A reviewing court must reverse a conviction where the record provides no discernible support for the verdict even when viewed in the light most favorable to the judgment below. [Citation.] Nonetheless, it is the [trier of fact], not the reviewing court, that must weigh the evidence, resolve conflicting inferences, and determine whether the prosecution established guilt beyond a reasonable doubt. [Citation.] And if the circumstances reasonably justify the trier of fact's findings, the reviewing court's view that the circumstances might also reasonably be reconciled with a contrary finding does not warrant reversal of the judgment. [Citation.]" (*People v. Hubbard* (2016) 63 Cal.4th 378, 392.)

"Every burglary of an inhabited dwelling house, . . . or the inhabited portion of any other building, is burglary of the first degree." (§ 460, subd. (a).) "All other kinds of burglary are of the second degree." (§ 460, subd. (b).) "Inhabited" means "currently being used for dwelling purposes, whether occupied or not." (§ 459.) "In determining whether a structure is part of an inhabited dwelling, the essential inquiry is whether the structure is 'functionally interconnected with and immediately contiguous to other

portions of the house.' [Citation.] 'Functionally interconnected' means used in related or complementary ways. 'Contiguous' means adjacent, adjoining, nearby or close. See Webster's Third New Internat. Dict. (1986) p. 492 ['ADJACENT . . . next or adjoining with nothing similar intervening . . . not distant . . . touching or connected throughout']; see also Black's Law Dict. (6th ed. 1990) p. 320, col. 2 ['[i]n close proximity; neighboring; adjoining; . . . in actual close contact'].)" (*People v. Rodriguez* (2000) 77 Cal.App.4th 1101, 1107 (*Rodriguez*).)

2. Sufficient Evidence Supported the Conviction for First Degree Burglary

As Gonsales concedes, numerous courts have held that an attached garage is part of an inhabited dwelling for purposes of first degree burglary. (See *In re Edwardo V.* (1999) 70 Cal.App.4th 591, 594-595 [upholding first degree burglary conviction where garage was attached to rear of duplex under shared roof and one wall with no direct access from the dwelling]; *People v. Fox* (1997) 58 Cal.App.4th 1041, 1043-1047 [same, where garage was attached to an indoor dwelling and the only entrance was a large outside door]; *People v. Ingram* (1995) 40 Cal.App.4th 1397, 1402-1404 (*Ingram*) [same, where garage and house shared a common roof, and there was no connecting door providing access to the living quarters from the garage], disapproved on other grounds by *People v. Dotson* (1997) 16 Cal.4th 547; *People v. Moreno* (1984) 158 Cal.App.3d 109, 111-112 (*Moreno*) [same, where garage was attached to residence by means of a common wall, but accessible only through an exterior entrance]; *People v. Cook* (1982) 135 Cal.App.3d 785, 788-789 (*Cook*) [same, where garage was connected to detached residence].) As demonstrated by these cases, the weight of authority favors the Attorney General's position.

Gonsales relies instead on *People v. Warwick* (1933) 135 Cal.App. 476 (*Warwick*). Warwick was convicted of first degree burglary for burgling an unoccupied tire store at night. The tire store was part of a larger building with a hotel occupying the upper portion and having an entrance on another street. The Court of Appeal reduced the

conviction to second degree burglary, noting, "The store and the hotel were wholly disconnected so far as communication was concerned, and there is no claim made that they were operated under the same management." (*Id.* at p. 478.) On those facts, the court held the tire store did not constitute an inhabited dwelling.

Gonsales also points to dicta in *People v. Picaroni* (1955) 131 Cal.App.2d 612 (upholding first degree burglary conviction for burglary of a house). In that case, the jury acquitted the defendant on another count in which he was charged with second degree burglary of a detached garage. In dicta, the court of appeal opined that the burglary of the garage could have sustained a separate count for second degree burglary, assuming the jury had found the defendant guilty on it.

Based on these cases, Gonsales urges us to adopt the rule that burglary of an uninhabited garage having a separate entrance accessible only by a public street cannot constitute first degree burglary. The Attorney General contends this proposition cannot be squared with *People v. Thorn* (2009) 176 Cal.App.4th 255 (*Thorn*). The facts of that case closely resemble the facts presented here. Thorn was convicted of first degree robbery for entering a carport directly under the victim's apartment. The carport was enclosed on three sides and but was "completely open to the paved courtyard in front of the building." (*Id.* at p. 260.) Three stairwells led from the courtyard to the apartments above the carports. (*Id.* at p. 261.) The Court of Appeal rejected Thorn's claim that the carport was not part of an inhabited dwelling and affirmed his conviction for first degree burglary, holding, "[T]he immediately contiguous requirement is easily met because here the carports are situated close to and directly underneath the occupied apartments themselves." (*Id.* at p. 262.) The court further stated, "[A] structure may be functionally interconnected to an inhabited dwelling even where access to the structure is from a common [courtyard] area." (*Id.* at p. 263.)

Gonsales contends *Thorn* is distinguishable because the courtyard in that case was on private property, whereas here the garage was only accessible from a public street.

We are not persuaded. "Courts specifically have recognized that the distinction between first and second degree burglary is founded upon the perceived danger of violence and personal injury that is involved when a residence is invaded." (*People v. Cruz* (1996) 13 Cal.4th 764, 775-776.) Here, the evidence showed the victim was alerted to the burglary by an alarm, and upon waking up, he heard the burglars in the garage below. He was tempted to confront the burglars, but he refrained from doing so only at the behest of his wife. On these facts, the safety rationale supports the rule that an attached garage so close to a living area that a resident can detect the burglary deserves the heightened protection afforded by the statute and the case law on point. (See *Thorn*, *supra*, 176 Cal.App.4th at pp. 260-261.) Accordingly, we find this claim without merit.

B. Pinpoint Instruction on First Degree Burglary

Gonsales contends the trial court erred by giving a pinpoint instruction stating that an attached garage is functionally connected with a house whether or not the garage is connected to the house by an interior door. The Attorney General contends the instruction was proper because it was supported by binding authority.

1. Background

Based on CALCRIM No. 1701, the trial court instructed the jury that first degree burglary is the burglary of an inhabited house, and, "[A] house includes any garage that is attached to the house and functionally connected with it." (CALCRIM No. 1701.) The prosecution also requested a pinpoint instruction stating, "An attached garage is functionally connected with a house whether or not a door directly connects the interior of the garage to the interior of the house." The court overruled a defense objection to this instruction, reasoning that the phrase "functionally connected" is "a little hard to understand." The court instructed the jury as requested, citing *Moreno*, *supra*, 158 Cal.App.3d 109.

2. Legal Principles

A trial court should grant a request for a pinpoint instruction if it is supported by substantial evidence, it correctly states the law, and it is not argumentative or confusing. (*People v. Wilkins* (2013) 56 Cal.4th 333, 347; *People v. Souza* (2012) 54 Cal.4th 90, 121; *People v. Hartsch* (2010) 49 Cal.4th 472, 500; *People v. Marshall* (1997) 15 Cal.4th 1, 40.) " 'We determine whether a jury instruction correctly states the law under the independent or de novo standard of review.' [Citation.] The pertinent inquiry is whether the instructions as a whole fully and fairly set forth the applicable law. [Citation.] In making that determination, we assume that jurors are intelligent persons capable of understanding and correlating all jury instructions which are given and, where reasonably possible, we interpret the instructions to support the judgment. [Citation.]" (*People v. Jo* (2017) 15 Cal.App.5th 1128, 1152.)

3. Any Error in the Pinpoint Instruction Was Harmless

In granting the prosecution's request for the pinpoint instruction, the trial court relied on *Moreno*, *supra*, 158 Cal.App.3d 109. In *Moreno*, the victim's garage was attached to his residence by means of a common wall, but the garage could only be accessed through an exterior entrance. The trial court had instructed the jury, " 'Where a garage is attached to an inhabited dwelling house and is, therefore, not a separate structure, it is considered to be a part of the inhabited structure within the meaning of Penal Code section 460.' " (*Id.* at p. 113.) On appeal, Moreno challenged the instruction and argued that the garage did not constitute part of an inhabited dwelling. The Court of Appeal rejected these claims and affirmed his conviction for first degree burglary. Looking to *Cook*, *supra*, 135 Cal.App.3d 785, the court reasoned that "a connecting door was only one method of demonstrating that a garage was an attached and integral part of a dwelling. [Citation.] Moreover, given the fact that the garage was under the same roof, functionally interconnected with, and immediately contiguous to other portions of the house, simple logic would suffer were we to leap over this interrelationship to a

conclusion that a garage is not part of a dwelling because no inside entrance connects the two." (*Moreno,* at p. 112.)

In *Ingram*, *supra*, 40 Cal.App.4th 1397, the Court of Appeal affirmed a first degree burglary conviction for entry into an attached garage without an interior doorway to the residence under facts similar to those in *Moreno*. The court held, "There is no meaningful distinction between an attached garage with an outside door and an attached garage with an inside door for purposes of deciding the degree of burglary. The close physical proximity of an attached structure is precisely what increases the potential for confrontation and threatens the safety of residents. This potential is no less when access to the garage is from outside rather than from inside the house." (*Ingram,* at p. 1404.)

The above cases make clear that an attached garage can be part of an inhabited dwelling without being connected by an interior door. Accordingly, as to whether the absence of an interior door was relevant to the jury's findings, the instruction properly told the jury to ignore that fact.

Gonsales nonetheless contends the instruction was improper because it told the jury it must find the garage was part of an inhabited dwelling. This argument has some force. The first part of the instruction—"[a]n attached garage is functionally connected with a house"—told the jury the garage was functionally connected as a matter of law. But a garage is only "functionally connected" with the dwelling if it is "used in related or complementary ways." (*Rodriguez*, *supra*, 77 Cal.App.4th at p. 1107.) It is the jury's duty to make this finding. If, for example, the victim had never made any use of the garage—e.g., because his landlord used it exclusively for storage—then a jury could reasonably find it was not "functionally connected" to the victim's dwelling.

In this case, however, undisputed evidence showed beyond a reasonable doubt that Soto used the garage in "complementary ways" by regularly accessing the garage and by storing his vehicles and other personal property in it. Accordingly, any error in the instruction was harmless beyond a reasonable doubt.

C. Exclusion of Portions of Defendant's Testimony

As set forth above, the police apprehended Gonsales and Kharoud after finding the two men hiding on a nearby balcony in the apartment complex shortly after the burglary. Gonsales contends the trial court erred by excluding portions of his testimony in which he intended to explain why he was hiding from the police on the balcony. The Attorney General argues that the trial court acted within its discretion, and that any assumed error was harmless because Gonsales was allowed to testify about his fear of the police.

1. Background

Officer Schwitters testified that after he arrived at the apartment complex, he chased two of the burglars on foot through the complex. He found the two men crouched down hiding on a nearby balcony. In his direct testimony, Gonsales testified as follows:

"[Defense counsel:] Were you trying to not be seen by the police officer?

"[Gonsales:] Yes.

"[Defense counsel:] Why?

"[Gonsales:] Well, like I was saying, it is just like, you know, stuff that's been happening around that neighborhood, like, there was a police officer that—

"[Prosecution:] Objection. Lack of personal knowledge. Speculation.

"[The Court:] Sustained.

"[Defense counsel:] Your Honor, it goes to Mr. Gonsales' intent and why he was crouching in the balcony.

"[The Court:] I think he's told us he's afraid of the police. I think we've got it. Let's go.

"[Defense counsel:] And so were you afraid that you were going to be apprehended or accosted?

"[Gonsales:] I just thought I was going to be harassed for awhile especially at what time it was, you know—and then I don't have a key and, like, I can't, like, I live there, but it is kind of hard to explain . . . ."

Defense counsel later tried to elicit testimony from Gonsales about Kharoud's appearance while the two men were hiding on the balcony:

"[Defense counsel:] And describe to me what [Kharoud] looked like to you at that time?

"[Gonsales:] Well, he just looked shocked and confused and, like—he has big green eyes, so I could tell when he's, like, looking, like, with his eyeballs all open and I was just trying, like, hey man what's going on, like, what did you do, like, what's happening and then, like, he was kind of ignoring me most of the time just, like, dude they caught me.

"[Prosecution:] Objection. Hearsay.

"[The Court:] Response?

"[Defense counsel:] Your Honor, just goes to the—Mr. Gonsales' state of mind, not for hearsay purpose. I don't think it is stated for the truth of the matter asserted.

"[The Court:] The objection is sustained. Please disregard any statements attributed to Komal."

2. Standard of Review

"A trial court's ruling on the admissibility of evidence, including one that turns on the hearsay nature of the evidence, is reviewed under the abuse of discretion standard." (*People v. Roa* (2017) 11 Cal.App.5th 428, 442.) We uphold a trial court's ruling if it was correct for unstated reasons. "A 'ruling or decision, itself correct in law, will not be disturbed on appeal merely because given for a wrong reason.' [Citation.]" (*People v. Dawkins* (2014) 230 Cal.App.4th 991, 1004.)

3. Exclusion of the Testimony Was Not An Abuse of Discretion

Gonsales contends the excluded testimony was erroneously excluded on hearsay grounds because it was not offered for the truth of the matters stated, but as evidence of his state of mind. He argues that he was entitled to present evidence showing that he had

an innocent explanation—his fear of the police—for why he was hiding from them on the balcony.

As to the first statement, the trial court did not exclude it on hearsay grounds. After Gonsales admitted he was trying to hide from the police, he attempted to testify that he did so because of "stuff that's been happening around that neighborhood, like, there was a police officer that—." The prosecutor then objected to it as speculative and lacking personal knowledge. After the trial court sustained the objection, defense counsel argued that it was relevant to Gonsales's state of mind, but counsel did not attempt to elicit any testimony to lay a foundation for the statement. The trial court then ruled that Gonsales had already testified about his fear of the police, implicitly finding the proffered testimony duplicative.

The Attorney General contends the statement was properly excluded as lacking foundation and that it was also inadmissible as unduly prejudicial under Evidence Code section 352. Given that defense counsel failed to adduce any testimony explaining the basis for Gonsales's state of mind, we agree that the trial court did not abuse its discretion in sustaining the prosecution's foundational objection.

As to the second statement, defense counsel asked Gonsales to describe Kharoud's appearance while the two men were hiding on the balcony. Gonsales replied that "I was just trying, like, hey man what's going on, like, what did you do," and Kharoud was "just, like, dude they caught me." Although Gonsales's response was somewhat ambiguous as to whether the two men actually spoke with each other, it appears he may have been trying to relay a verbal exchange he had with Kharoud. Accordingly, the prosecution objected on hearsay grounds, and the trial court sustained the objection. Gonsales now contends the testimony was not offered for the truth of the matter and was therefore improperly excluded on hearsay grounds.

We see no abuse of discretion. If Gonsales was attempting to relay a verbal statement Kharoud made, the testimony was nonresponsive. "A witness must give

responsive answers to questions . . . ." (Evid. Code, § 766.) Defense counsel asked Gonsales to describe Kharoud's appearance—"what he looked like"—not what he said. If Gonsales was trying to testify that Kharoud had literally stated, "dude they caught me," then Gonsales did not answer counsel's question, and the testimony should have been stricken as nonresponsive.

Alternatively, the statement that Kharoud was "just, like, dude they caught me" may have been based solely on Kharoud's appearance—in other words, that Gonsales attributed a specific meaning to a gesture or face that Kharoud made. If so, the testimony was excludable as speculative. (Evid. Code, § 702, subd. (a) [the testimony of a witness concerning a particular matter is inadmissible unless he or she has personal knowledge of the matter].)

In any event, even assuming the testimony was not properly excluded on hearsay grounds, any assumed error was harmless under either the federal or state law standard. As the Attorney General points out, Gonsales was allowed to testify in detail about his fear of the police, and the proffered statements offered no additional probative value in that regard.

Accordingly, we conclude the trial court did not abuse its discretion in limiting Gonsales's testimony, and the claim is without merit. We will affirm the judgment.

III. DISPOSITION

The judgment is affirmed.

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Greenwood, P.J.

WE CONCUR:

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Premo, J.

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Elia, J.

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